

REMARKS/ARGUMENTS

The claims are divided into the following Groups:

Group I: Claim(s) 1-7, drawn to an oral preparation comprising an organic acid.

Group II: Claim(s) 8-9 drawn to a chew gum composition.

In addition, an Election of Species as described below is required:

Specie A: Applicant must elect one single disclosed acid from the list in Claim 3.

Specie B: Applicant must elect one single disclosed fluoride compound from the list in Claim 4.

Applicants elect, with traverse, Group I, Claims 1-7, for examination. As single disclosed species, Applicants provisionally elect, for examination purposes only, the following species set:

Specie A: malic acid

Specie B: sodium fluoride

Claims 1-7 read on the elected species.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding technical feature that distinguishes the claims over the prior art. Rajaih (WO 02/074274) is cited to show oral care compositions with sodium fluoride and citric acid.

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

In addition, The MPEP §806.03 states:

“Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

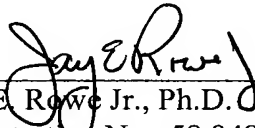
Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-II with respect to MPEP §806.03.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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